

BEFORE THE STATE TAX APPEAL BOARD

OF THE STATE OF MONTANA

RICHARD & ALMA ECKLUND,)	
)	DOCKET NO.: PT-1997-57
Appellants,)	
)	
-vs-)	
)	
THE DEPARTMENT OF REVENUE)	FINDINGS OF FACT,
OF THE STATE OF MONTANA,)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
Respondent.)	<u>FOR JUDICIAL REVIEW</u>

The above-entitled appeal came on regularly for hearing on the 7th day of December, 1998, in the City of Great Falls, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was duly given as required by law. The taxpayer, represented by Richard Ecklund, presented testimony in support of the appeal. The Department of Revenue (DOR), represented by appraiser Joan Vining, presented testimony in opposition to the appeal. Testimony was presented, exhibits were received and the Board then took the appeal under advisement; and the Board having fully considered the testimony, exhibits and all things and matters presented to it by all parties, finds and concludes as follows:

FINDINGS OF FACT

1. Due, proper and sufficient notice was given of this matter, the hearing hereon, and of the time and place of said hearing. All parties were afforded opportunity to present evidence, oral and documentary.

2. The taxpayer is the owner of the property which is the subject of this appeal and which is described as follows:

Improvements only on Lot 22, Block 3,
Riverview Addition to Great Falls,
Cascade County, Montana.

3. For the 1997 tax year, the DOR appraised the subject property at a value of \$12,642 for the land and \$66,058 for the improvements.

4. The taxpayer appealed to the Cascade County Tax Appeal Board requesting a reduction in value to \$57,368 for the improvements. The taxpayer did not appeal the land value to the local board.

5. The County Board denied the appeal.

6. The taxpayer then appealed that decision to this Board.

TAXPAYER'S CONTENTIONS

The taxpayer presented photographs of the property (Ex 1) depicting the problems he believes have a value diminishing affect on the home. He produced an estimate of costs that would be required in order to correct the problems

to the concrete work, the house and garage siding and soffit, and the yard fence. (Ex 2) The total for labor and materials for the work covered on exhibit 2 is \$11,794. The items listed are things that he was told would need to be done in order for a prospective buyer to obtain financing for the purchase.

Mr. Ecklund testified that the 1996 assessed value on the house was \$49,200. He presented his original 1997 assessment notice that showed the improvement value of \$64,558 (Ex 4), and a revised assessment notice for 1997 that indicates the improvement value of \$66,058.(Ex 5) He testified that the revised assessment notice was sent to him following his "appeal" when the home was visited by the DOR.

He introduced copies of the property record for the subject home (Ex 6), the Montana Comparable Sales sheet for the home (Ex 7), the DOR form AB-26 that he filed with the DOR (Ex 8), and his written comments on the selected comparable homes found on exhibit 7. (Ex 9)

Mr. Ecklund commented that the homes in Riverview are constructed very similarly and the homes in this subdivision were constructed at about the same time and apparently many by the same contractor. He stated that he can only compare the comparables from the exterior. He was very familiar with one home that sold for \$78,000 but it required \$10,000 in upgrading costs to obtain that amount. That house, at 264-19th Ave NW,

he is familiar with because he assisted with the maintenance of it and the preparations for sale for the previous owner.

The kitchen of the subject home was remodeled eleven years ago, in that new cabinets were installed and worn out appliances were replaced. He also has added air conditioning.

He has done nothing by way of window replacement or structural changes, but he has done some of the exterior concrete work that was required.

The taxpayer stated that the inside of the home is in good condition, but the exterior is in poor condition. He testified that the installation of central air conditioning did not cost what the DOR has used in their appraisal. It is his opinion that not all homes are the same, but agreed that if his was upgraded it would be worth near the same as those found that have sold.

DOR CONTENTIONS

The DOR has valued the property using the market approach to value. Ms. Vining introduced a copy of the property record card for the subject (Ex A), and a map showing where the subject property and the comparable properties are located (Ex B).

Ms. Vining testified concerning the result of the internal and external review she made of the home with the taxpayer in response to the AB-26 request. Corrections were

made to those features that the DOR had in error on the property record card. The adjustments, both up and down, resulted in an overall increase in the value which was then sent to the taxpayer on the revised assessment notice. There were no changes made to the effective year or the Condition Desirability or Utility (CDU) as a result of the review.

The comparables selected are very similar in size, and the required adjustments for physical or finish characteristics have been made. The similarities and the fact that the comparable sales are all located within the same neighborhood as the subject gives the DOR a high level of confidence in the value determined by the market approach.

BOARD'S DISCUSSION

The taxpayer understands that the market value of homes in this subdivision seems to be a relatively close market. The DOR sales would agree with that. The point of his argument is that in order for his property to be in that market level the house would need to be repaired or remodeled to be brought up to that same market level.

The appraiser made a thorough review in response to the AB-26 review request and changed the inventory of the characteristics of the property. At the same time however there were no changes made to those items that drive the

depreciation allowed on the property, the effective age and the CDU. As a result, even though the problems pointed out by the taxpayer were observed, there was no recognition of them that would have an impact on the value.

It is the opinion of this Board that the subject property should be given additional depreciation to recognize the physical condition of the house. Based on the testimony and the evidence in the record the Board will direct that the home be revalued utilizing a reduction in the CDU determination from average to fair.

CONCLUSIONS OF LAW

1. **15-8-111. Assessment - market value standard - exceptions.** (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

(2)(a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) If the department uses construction cost as one approximation of market value, the department shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence.

2.15-8-601. **Assessment revision - conference for**

review. (1) (a) Except as provided in subsection (1) (b), whenever the department discovers that any taxable property of any person has in any year escaped assessment, been erroneously assessed, or been omitted from taxation, the department may assess the property provided that the property is under the ownership or control of the same person who owned or controlled it at the time it escaped assessment, was erroneously assessed, or was omitted from taxation. All revised assessments must be made within 10 years after the end of the calendar year in which the original assessment was or should have been made.

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Cascade County by the assessor of that county at the 1997 tax year value of \$12,642 for the land and the reduced value for the improvements as determined by the DOR in accordance with the provisions of this decision.

Dated this 20th of January, 1998.

BY ORDER OF THE
STATE TAX APPEAL BOARD

PATRICK E. McKELVEY, Chairman

(S E A L)

GREGORY A. THORNQUIST, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.